IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER E.S.I. NO. 8 OF 2006

EMPLOYEES STATE INSURANCE CORPORATION THROUGH ITS DEPUTY REGIONAL DIRECTOR, PANAJI GOA. ....Appellant

Versus

M/S V.S. DEMPO AND CO.LTD. PANAJI GOA. ....Respondent

Mrs. A. A. Agni,Advocate for the Appellant.
Mr. G.K. Sardessai with Mr. V. A. Palekar, For Respondent.

Coram:- S.K. SHAH, J.

Date:- 8th February, 2007

P.C.:

Heard learned Counsel on both sides.

2. For the reasons mentioned therein, the Order was passed by the Presiding Officer of the Employees Insurance Court, North Goa, Panaji on 30.12.2005. By this Order, the learned Presiding Officer partly allowed the petition and rejected prayer (a). The fact is that the Presiding Officer held that the respondent's establishment of Office of Mines was liable to be covered under the provisions of the ESI Act. However, the Presiding Officer rejected the demand made by the appellant for the period from 1.3.1993 to 31.7.1997. This was done on the basis of the decision of the Apex Court in the case of ESI Corporation v. Hyderabad Race Club reported in 2004 III CLR, 76.

3. The learned counsel for the appellant submits that the Judgment of the Apex Court was passed in peculiar facts of the said case and that the ratio of that case would not be applicable to the facts of this case.

4. The learned counsel for the respondent submits that the ratio laid down by the Apex Court in that case applies to the present case. He also points out that a similar view has been taken by this Court in Appeal Under E.S.I. No.16/06 by Order dated 20th September, 2006.

5. I do not find that there are any different facts involved in this case. There is no dispute that by the decision of this Court rendered on 12.2.1997 it was held that the office of Mines is also covered under the ESI Act. It is thereafter that the appellant made a demand on 11.6.98. However, the fact is that soon after the decision of this Court dated 12.2.1997, the respondent themselves started contributing under the provisions of the ESI Act. It is vehemently submitted on behalf of the appellant that earlier the appellant started making demand by letter dated 11.6.98 with the respondent and therefore the learned counsel wants to submit that, in fact, they have started taking steps towards making demand. However, this aspect does not matter much as the decision of the Apex Court in that case was that no earlier demand was made and therefore the claim was bad in law. In the present case also the same thing has happened.

6. Under the circumstances, I do not find any merit in the appeal and the appeal is therefore dismissed.

S.K. SHAH, J.

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